

Embodied Rape: Ethnicity and Gender in the Prosecution of Wartime Rape in the Former  
Yugoslavia

Honors Research Thesis

Presented in Partial Fulfillment of the Requirements for graduation with  
Honors Research Distinction in the undergraduate colleges of The Ohio State University

by

Edward M. Zitnik, Jr.

The Ohio State University

May 2014

Project Advisor: Professor Jennifer Suchland, Department of Slavic and East European  
Languages and Cultures

## Table of Contents

Introduction	2
I. The region, the war, and the role of feminism in prosecuting war crimes	5
<b>Former Yugoslavia and its War</b>	5
<b>Feminist Perspectives on Rape</b>	10
<b>International Criminal Tribunal for the Former Yugoslavia</b>	15
II. Tetralogy of Rape: Three Cases of ICTY-Convicted Rape and the Case which laid the Groundwork	19
<b>Duško Tadić</b>	19
<b>Dragoljub Kunarac</b>	22
<b>Anto Furundžija</b>	24
<b>Hazim Delić</b>	25
<b>Case Analysis</b>	27
III. Ethnicity is Essentialized and Misunderstood	33
IV. Implications of War	39
V. Conclusion	51
Bibliography	53

*A child can carry both the shame and honor of a parent. They serve as heavy burdens inherited from one generation to the next and can lay the foundation of a child's identity coming into adulthood. The Bosnian film Grbavica illustrates these burdens carried by Sara, the 12-year-old daughter of single-mother Esma living in post-war Sarajevo. Growing up, Sara was told that her father died as a war hero during the Bosnian war. She took pride in his death, and used his patriotism to hold herself to a high standard of honor. While noble, this was not her father's true past. Esma was raped by a Serb soldier during the war. Sara was born as a result of this rape. Her mother buried the truth to protect her daughter, her identity, and their place within their community. This film sheds light on the dark shadow cast from the war, reminding us all that the implications of the conflict are all around us even if the war itself has passed. Sara represents one of an unknown number of forgotten children who carry the burden of their dark past.*

## CONGRATULATIONS



The birth of a 'Serb' child: Initially the doctor tells the mother 'Congratulations! It's a boy!' ("Čestitamo! To je dječak!"), but changes his mood once the nurse sees the Serbian flag and alerts him: 'Doctor! I think that it's a 'fruit of evil' (Doktore! Mislim da je to 'plod zla!')', a term used to refer to bastard children. He says to the mother, 'M'am, I don't know how to tell you this, but..' (Gđa, ne znam kako da vam reći ovo, ali...') knowing that is he is telling her bad news.

In this work, I examine the use of rape as a war tool during the Yugoslav Wars in the 1990s in the Former Yugoslavia. My research connects previously separate conversations about the origins of the war, ethnic and national politics, women's rights under the law and in their

communities, and the implications of the conflict in reference to both the local and international dialogue about these issues. The political and ethical debate about categorizing the use of rape as a tool of war during the conflict in the Former Yugoslavia has preoccupied feminists and legal professionals. Scholars debate whether rape was used as a patriarchal tool against women or used as a tool for ethnic cleansing. The line between sexist violence and ethnic cleansing is blurred because the act of rape itself is the same in each case. Physically, they are each acts of male sexual aggression directed towards females, even though the intention in each case is not the same. At the heart of this debate is a focus on the rights of women on all sides of the war. When prosecuting rape and other war crimes, the International Criminal Tribunal for the former Yugoslavia (ICTY) cites violations of the Geneva Conventions, Genocide Convention, and crimes against humanity. These three legal references each have gendered and ethnic dialogue that governs how war crimes are prosecuted by the ICTY.

This thesis asks how gender and ethnicity form the discourse about criminalizing rape and the long-term implications of how women and the children born out of this conflict have struggled to be incorporated into their communities. This is a question of both women's rights and ethnic identity. Here, I investigate the gendered and ethnic politics of both prosecuting rape and its implications post-war. The question of how to prosecute wartime rape becomes complicated because the intention of the crimes is not always clear to outsiders. Unlike genocide in other conflicts, the motivation by Serbs in Bosnia and Herzegovina was not simply to eliminate an ethnic group; rather it was to create ethnically pure territories in Former Yugoslavia. When these cases reached the courtroom, the international community's misunderstanding of the conflict revealed itself again as women as a female community failed to receive adequate justice.

Gender and ethnicity were understood as two mutually exclusive ideas which prohibited proper prosecution of the crimes.

Both wartime and peacetime rape share a similar foundation in patriarchy, however only wartime rape was discussed in court, thus leading to only a sub-section of women being represented in court. In this way rape and other sexist violent crimes were masked by the ethnic categorization of the conflict and seen as a consequence of the war, rather than a discreet motivation. The ethnic view of the war is easier to digest by the international community, but it consequently maintains the patriarchal norm which allows for rape to occur in the first place. In post-war Yugoslavia all victims of wartime rape faced a certain level of hypocrisy leaving them ultimately unaccepted. Women who had abortions were viewed as uncured or unholy by their religious communities, but those who carried their children to term were viewed as damaged. Ultimately, despite the work of a few NGOs in the area, these women and children are consistently ignored.

The shortcoming of the international discourse surrounding rape is that it elevates rape to such a high level that it is no longer seen as a personal, lived experience. On the ground level rape is embodied in the individual. While legal, high-level intervention is necessary to set precedence for future crimes, it must do so in a way that each victim is seen as an individual rather than a very small piece of a very large, complex puzzle. As a result of this discourse, women are left abandoned and isolated. There are victories in the court which empower the protection of women, but the reality of the war is that for individual women, rape has not been reconciled to the same extent which it has in the Tribunal.

## I. The region, the war, and the role of feminism in prosecuting war crimes

### Former Yugoslavia and its War

While the geographic region generally referred to as “the Balkans” has undergone countless changes in its political borders, the ethnic groups that inhabit the area have remained



constant. One region in particular, now termed Former Yugoslavia, has experienced numerous political developments. The idea of a common Slavic-speaking state began in 1918 when the Kingdom of Serbs, Croats, and Slovenes was created following World War I. This was the first legitimate attempt at a common Yugoslav state. The state itself remained a political entity throughout the interwar period. During World War II, the Axis Powers invaded the Kingdom of Yugoslavia, which was later dissolved in 1945. With the creation of a communist



government under the rule of Josip Broz Tito, the state was renamed the Federal People’s Republic of Yugoslavia, shown in the first map on the page followed by the post-war borders in the second map (Mazower, 2000). The Socialist Federal Republic of Yugoslavia (SFRY) officially formed in 1963 and included the Socialist Republics of Bosnia and Herzegovina, Croatia, Serbia, Macedonia, Montenegro, Slovenia and the provinces of Vojvodina, and Kosovo. Liberated from the Red Army following the Second World War, Yugoslavia sustained a basic level of

unity under Tito. He created a common enemy in Stalin which gave Yugoslavs something on which to unite. While many Yugoslavs self-identified with their individual republics, Tito

maintained a loose Yugoslav identity throughout his presidency until his death in 1980 (Anderson, 2000).

The five republics and two provinces had ethnic diversity as time passed and geographic boundaries shifted, yet some nations had the appearance of being ethnically homogenous since inhabiting South East Europe. The alleged uniformity of three republics in particular gave the Yugoslav Wars of the 1990s a special focus on ethnicity and how it is essentialized by both Balkan and non-Balkan groups. The three ethnic groups that were the main actors in the wars were the Bosniaks, Serbs, and Croats. The Bosniaks resided primarily in the Republic of Bosnia and Herzegovina and were Muslim. Serbs resided in the Republic of Serbia and were Orthodox. Croats resided in the Republic of Croatia and were Catholic. The geographic alignment of these ethnic groups was weak, as there was a considerable amount intermixing throughout the entire region. Despite claims that there were deep-rooted cross-ethnic hatreds that motivated the start of the wars, the United Nations cites the Former Yugoslav Republic of Serbia's desire for political gains as the initial catalyst of the conflict (Daniel, 2004).

Two political leaders in particular changed the landscape of identity for Yugoslavs post-Tito. The first was Slobodan Milošević, the president of the Republic of Serbia. He wanted Serbia to be recognized as an independent state in 1986, but his request was denied (Hoare, 2010). While Serbia remained a part of Yugoslavia, the idea of a separate nation was still very salient in the republic and with Serbs living in Croatia and Bosnia and Herzegovina. Milošević felt that Serbs were being prosecuted outside of Serbia proper, such as in the Krajina in Croatia and in Kosovo. As a reaction to protect his people, Slobodan Milošević began organizing Serbs across the region in the late 1980s (Hoare, 2010).

A second nationalist in the Former Yugoslavia was Franjo Tudjman, the president of the republic of Croatia. He was originally purged in 1967 by Tito for being a Croat nationalist, yet his patriotism continued well into the 1980s and 1990s. He led a grassroots nationalism campaign which resulted in the Croatian Democratic Union winning the 1990 spring election. Tudjman became president of Croatia (Hoare, 2010). Together, these two political leaders shaped the identity of their people away from a shared identity and towards a divided and isolated understanding of belonging in South East Europe.

There were also economic tensions between the wealthier western Yugoslav states and the poorer eastern states. There was great disparity between the economic strength of each republic. For example, the GDP *per capita* was 7:1 between Slovenia and Macedonia (Anderson, 2000). The inequality heightened tensions between republics as wealthier states were taxed more to compensate for the poorer republics. The frustrations of western Yugoslavs further developed ideas of nationalism and autonomy. Slobodan Milošević and other Serbian political leaders pressured the other republics for power in hopes of creating a “Greater Serbia” that mimicked the borders of the ancient Kingdom of Serbia. In 1989 Milošević officially abolished the autonomy of Kosovo. This political move made the other republics fearful of their own sovereignty, particularly in the republics of Slovenia and Croatia (Swain; Swain, 2003).

In response to the territorial gains made by Milošević and the Republic of Serbia in the name of SFRY, the Republic of Croatia made moves towards independence. Croatian Serbs (Serbs living in the Republic of Croatia) were opposed to Croatian independence and left the republic. Jugoslavenska Narodna Armija (JNA; ‘Yugoslav People’s Army’) made up primarily of Serbs, supported the Croatian Serbs against the Republic of Croatia starting in June 1991. The fighting escalated into what is often referred to as the Croatian War of Independence. This



conflict marked the start of the violence in the Yugoslav Wars and accounted for the first casualties of the conflict (Swain; Swain, 2003).

On June 25, 1991 Slovenia established *de facto* independence. The very next day the JNA, whose headquarters were in Belgrade, Serbia, invaded Slovenia resulting in a few dozen deaths. This is known as the Ten-Day War (Race, 2005). After negotiating with Croatia, Slovenia decided to postpone its quest for independence for three months. Representatives from Croatia, Slovenia, and SFRY signed the Brioni Agreement, which promised to reconsider the future of Yugoslavia and by the end of October the JNA left the region (Fabijanic, 2008). Despite this compromise, Slovenia and Croatia continued to push for independence. On January 15, 1992 the European community recognized the independence of Slovenia and Croatia from Yugoslavia (Swain; Swain, 2003).

By March 1992 the Bosnian War began. Bosnia and Herzegovina became the center of the Yugoslav conflict after Croatian and Serbian leaders began to negotiate for control over the republic. The Yugoslav People's Army and SFRY were both Serb-led by 1992 and they pressured Croatia for control over Bosnia. The Bosnian government, well-represented with all major ethnicities in the region, proposed a referendum for independence from Yugoslavia. The JNA attempted to prevent Bosniak citizens from voting, but their efforts were not successful as the referendum passed almost unanimously (Swain; Swain, 2003). Although the referendum passed, Serbia continued to push for control over Bosnia and Herzegovina. With control of the JNA, Serbia invaded and seized the city of Sarajevo on April 5, 1992, a major city located in central Bosnia. Along with the capture of Srebrenica, the invasion of Sarajevo resulted in one of the largest death per capita in the entire conflict (Swain; Swain, 2003). These attacks were led by the president of the Bosnian political entity Republika Srpska Radovan Karadžić, a Bosnian

Serb and who greatly opposed Bosnian independence. He is often accused of initially proposing ethnic cleansing, the systematic removal of all non-Serb communities (particularly Bosniaks) from SFRY, in order to obtain territorial control of the republic of Bosnia and Herzegovina (Velikonja, 2003).

A major tactic used during the invasions in Bosnia was the creation of war camps run by the JNA. While a variety of non-Serbs were held hostage in these camps, the main prisoners were Bosniaks. When the JNA invaded communities, they took all women and children as prisoners and generally killed the men (ICTY Case No. IT-98-32). The camps were held in schools, churches, or businesses that were evacuated during the raids. Once in the camps women were raped, tortured, and humiliated in front of their families and community members. In many instances, women were raped several times a day by several different men. In extreme cases women were forced into pregnancy and held as prisoners until they were far enough along in their pregnancies when they were no longer eligible for legal abortions. An influential portion of these camps were located in Sarajevo, the capital city of Bosnia and Herzegovina. The city was captured by Republika Srpska and the JNA on May 2, 1992 by 18,000 troops. After more than 11,000 deaths the JNA set up war camps to further torture Muslims living in Bosnia and Herzegovina (Hartmann, 2007).

Serb military forces utilized similar tactics in Srebrenica, Bosnia and Herzegovina in the Srebrenica genocide of July 1995. This tactic aimed to eliminate the border between Serbia and Republika Srpska which ran along the River Drina. Thousands of women and children were evacuated and placed in camps while more than 8,000 men and young boys were slaughtered in a group massacre led by General Ratko Mladić of the Army of Republika Srpska (ICTY Case No. IT-04-80-I). Lasting only about a week and a half, this invasion was particularly shocking due to

its clear ethnic motivation and volume of victims in such a short period of time. It has also been referred to as the bloodiest conflict on European soil since World War II. The number of women who experienced rape and other violent sexual crimes is unknown, even years after the war has ended. Estimates range from 20,000 to 50,000 (<http://www.ptsd.va.gov/public/PTSD-overview/women/rape-women-war-zone.asp>) based on estimates made from other global conflicts. The fact that these numbers are still contested reveal the extent to which this conflict has been misunderstood and women have been underserved.

### **Feminist Perspectives on Rape**

In this section I discuss the debate between feminists during the war which were well underway before any plan was made to create an international court to prosecute wartime rape. Among the extensive commentary on rape were two main camps with competing ideologies about how rape should be prosecuted by the international community. The first camp, led by Catharine MacKinnon, focuses on the genocidal rape of non-Serb women by Serb men while still recognizing the widespread use of rape in both wartime and peacetime on all sides of the war. The second camp, led by Rhonda Copelon with much support from the feminist community, criticizes the special attention paid to genocide and instead aims to focus legal reform on addressing the patriarchal norms that allow rape to occur in the first place, let alone in the context of war. Her camp believes genocide clouds the true feminist issue at hand and underserves women (Engle, 2005). The two camps diverge most clearly over how to answer the question: for whom do we need to advocate, women or ethnic women?

Catharine MacKinnon builds her argument in favor of prosecuting rape in the Yugoslav wars as genocide by first establishing the shortcomings of international humanitarian law. While

rape and other sexually based crimes are illegal by customary international law, they are not readily enforced and the rapists are not held accountable for their actions. Furthermore, rape is not explicitly included as a human rights violation in the same way that other violence based crimes are categorized (MacKinnon, 1993). The current dialogue about rape casts each case as an individual man assaulting an individual woman and ignores the role of the state. For example, while states have not explicitly ordered wartime rape in most historical cases, they have played an active role in their progression by placing the issue into the private sphere, ignoring the outbreak of rape, and removing the discussion of rape—and how it can be institutionalized—from the public discourse.

MacKinnon goes on to say that not only do states hold power to allow rape to occur during war, they even go as far to explicitly order its use. She calls the rape of non-Serb women by Serb men genocidal and part of Serbia's greater quest for ethnic cleansing throughout Yugoslavia. In her view, the issue of the conflict is not the war itself, but the desire to enact genocide via a number of vehicles, war being the central agent. She describes the connection between genocide, war, and rape as a three-layered ideology where genocide is the main goal, war is the direct instrument of genocide, and rape is a further instrument of war. (Mackinnon, 1993). She criticizes fellow feminists by arguing that these victims are not simply victims of rape or genocide, but rather they are victims of rape *as* genocide. Rape was targeted against them because they were both women and non-Serb, not because they were one or the other. While rape has been a part of nearly all conflicts across the world, it has not played such a systematic role as it does in the Yugoslav case. For this reason, she believes that rapes committed as part of genocide deserve special attention in court (MacKinnon, 1993).

As a feminist who specializes in acts of violence against women, Catharine MacKinnon was particularly vocal against competing views on how these crimes should be criminalized. She calls the alternative legal plan a ‘cover-up’ that both undermines and underserves victims of this war. In her opinion, it is not fair to prosecute all rapes during the war equally (MacKinnon, 1993). This was not a civil war by any means, and the ethnic tensions—at least at the beginning of the war—were considerably one-sided. If the feminist community groups all rapes into a motif of men raping women, the community does not give justice to the underlying genocidal motivation of these crimes. As she describes this war was not about men raping women, rather it was about some men raping a very particular set of women based on qualities that not all women had in Yugoslavia (MacKinnon, 1993). MacKinnon’s opponents believe that putting these rapes into the context of genocide only buries them further and results in taking sides in a war between nations rather than taking sides in a war between genders. As it relates to conflict, they categorize this as a civil war where ethnic tensions boiled over into violence.

MacKinnon refutes this by first criticizing the categorization of the conflict as a civil war. She believes this undermines the role played by Serbia—particularly in their initial invasions of the western Yugoslav republics—and gives the international community a loop hole to do nothing about a conflict that, in their minds, should be handled internally. Furthermore, the use of the term civil war was even more misused, as both Croatia and Bosnia and Herzegovina were their own nations, separate from the former Yugoslav state (MacKinnon, 1993). While the tensions between these rival nations cannot be ignored, they also cannot be blamed for the conflict which was not started amicably. MacKinnon continues her argument against the rest of the feminist community by criticizing her opponents’ ignorance of the brutality that accompanied these rapes. Other feminists, such as Copelon, want to include rapes of non-Serbs by Serbs with

rapes committed on all sides of the war. By doing this they dilute these extreme cases of rape and ignore their greater implications on genocide. As MacKinnon describes, this is not rape which we are used to seeing in conflict, rather it is highly-controlled rape, ordered by a governing body to serve as a spectacle that is symbolic for the destruction of a people (MacKinnon, 1993).

The strongest counterargument, made by Rhonda Copelon believes that focusing on this extreme example of rape fails to challenge the issue of rape itself; it slates rape as a mere by-product of war and does not address the true rape epidemic that is experienced by women everyday all around the world. Her argument centers on the history of rape in war. She cites World War II and the war of independence in Pakistan as examples of how rape has surfaced into international dialogue only as a small piece of overall relations of war (Copelon, 1994). While rape was a topic of discussion in the context of these conflicts, it disappeared into history as time passed and other conflicts arose around the world. While tagging rape with the undertones of genocide makes it a notable issue for international discussion, it loses staying power since the true issue of rape is never being addressed head-on. She cautions feminists such as MacKinnon that emphasizing the rape of Muslim women in Bosnia and Herzegovina—rather than women as a people—is dangerous (Copelon, 1994).

A clear point of difference between these two feminist camps is how they understand the relationship between rape and genocide, particularly in the Yugoslav case. While MacKinnon describes a layering of violence between the two, Copelon asserts that rape and genocide are two separate atrocities that women can experience in war, independent of the other even if they occur simultaneously. She believes that focusing on the cross-section of rape and genocide forces rape “back into the bottle” (Copelon, 198) and risks reverting rape back to being invisible once again. Copelon asserts that rape in the Yugoslav wars will not become the standard practice for

prosecuting rape because it will not challenge the role patriarchy plays in allowing rape to occur in the first place, regardless if it has the potential to be the exceptional case in international humanitarian law. As an alternative, she believes that while the genocidal rapes committed in Yugoslavia should be acknowledged, more attention needs to be paid to rapes which occur in daily life during peacetime (Copelon, 1994).

Copelon makes another argument against genocidal rape, stating that it is not exclusive to war. She cites gang rape used by bandits and travelers to instill fear in communities and acquire their local goods. For this reason genocidal rape should not be kept exclusive to international law regarding war. Commenting on other international laws, Copelon cites that there is a growing ideology around focusing on extreme cases of rape rather than addressing what she describes as ‘normal’ rape (Copelon, 1994). Rape is not given equal weight in court as the other violence-based crimes unless it is specifically paired with some greater or systematic implication. Copelon believes this is a huge shortcoming of the international feminist community.

Susan Brownmiller was another central feminist in the debate about prosecuting rape in court. Her arguments aligned with Rhonda Copelon, and attests that under MacKinnon’s understanding of genocidal rape women who are raped are neither women nor women of their ethnicity, rather they are victims of rape in a war. They lose their identity and become victims of the propaganda which made these crimes surface initially (Brownmiller, 1992). The Bosnia and Herzegovinan government’s claims that Serbs are trying to dispel their culture, and Brownmiller suggests that this is a typical tactic used by oppressed states. She is critical of Bosnia and Herzegovina, suggesting that they should challenge the individual cases of rape rather than cloud the significance of the rapes with the dialogue of war and genocide. She feels that women have become a form of propaganda themselves whose voices are only heard when they cry out for

international attention in the name of war. Brownmiller believes this tactic does not give women justice as women, and leaves them only with shame (Brownmiller, 1992).

Despite the differing opinions on how rape should be prosecuted in the courts—recognizing genocidal rape or focusing on rapes committed on all sides of the war—both Catharine MacKinnon and Rhonda Copelon agree on one very important point. They both criticize the ways in which rape can be prosecuted in international court. They both believe that being a human being and being a woman have become two mutually exclusive identities in the context of international law, where women are not protected for being women. Their solution is to have rape be explicitly listed as a crime against humanity on its own, free of any other stipulation or ties to a particular war tactic (MacKinnon, 1993; Copelon, 1994). The next section details the legal dialogue about rape and highlights the possibilities for rape law reform.

### **International Criminal Tribunal for the Former Yugoslavia**

While there was no immediate intervention from the European community, international governing bodies began to investigate the conflict soon after the fighting broke out in Yugoslavia. The United Nations established a Commission of Experts in 1992 to analyze the wars in SFRY (Swain; Swain, 2003). In their final report, the Commission concluded that the atrocities in the wars should be categorized as genocide, grave breaches of the 1949 Geneva Conventions, violations of the laws and customs of war, and crimes against humanity. The United Nations then began to conceptualize an International Criminal Tribunal for the former Yugoslavia (ICTY) along with its organization and jurisdiction.

The United Nations created the International Criminal Tribunal for the former Yugoslavia (ICTY) through Resolution 827 on May 25<sup>th</sup>, 1993. The tribunal was established in



the midst of the conflict before the outbreaks in Sarajevo and Srebrenica. This gave hope to victims of the war that they would receive legal support in a timely manner. The tribunal was established to prosecute perpetrators of war crimes in the former Yugoslavia in the 1990s and give justice to victims of the war. The tribunal was aimed at “prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia” (S/RES/827 (1993)). The violations included “mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of ‘ethnic cleansing’, including for the acquisition and the holding of territory” (S/RES/827 (1993)). Its jurisdiction was established when the UN Commission of Experts presented the Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993) to the UN Security Council (S/25704).

The foundation of the ICTY was built on milestone international courts that predated the 1993 UN Resolutions. To establish the protocols for prosecuting genocide, the ICTY referred to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide which was established by the United Nations in response to the holocaust. This landmark legislation established a legal definition of genocide as well as a means to prosecute it internationally (A/RES/260). In Article II the Convention defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” These acts include:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

Article IV establishes that “constitutionally responsible rulers, public officials, or private individuals” can all be charged with genocide. Article VI establishes that persons charged with genocide [...] shall be tried by a competent tribunal in the territory of which the act was committed” (A/RES/260). While this convention created a clear legal explanation of genocide, “very little opportunity arose for the notion to be considered by judicial bodies within a context other than the holocaust” (Tournaye, 2003). However, the situation in Bosnia and Herzegovina did not fit the exact definition of genocide established in the 1948 Convention, proving problematic to international law makers when addressing the conflict. The Convention’s definition of genocide is reliant on the perpetrators’ desire to destroy the opposing group; the motivation in Bosnia “was not to exterminate an ethnic group, but to rather expel it in order to create ethnically pure territories” (Tournaye, 2003). Thus, the question faced by the United Nations was whether or not ethnic cleansing is a form of genocide, rather than a discrete legal classification of war atrocities.

Article II of the Secretary-General Report explains how the ICTY prosecutes individuals who committed grave breaches of the Geneva Conventions of 1949 (S/25704). These grave breaches include:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

Individuals have been convicted of similar or identical crimes in other contexts (Engle, 2005), and they set the precedence for criminalizing these crimes in the Yugoslav context.

The third jurisdiction, prosecuting violations of the laws and customs of war, is acknowledged in Article III of the Secretary-General Report. It upholds the standards set in the most recent international war tribunal by defining laws and customs of war within the Nürnberg Tribunal. It also covers aspects of international humanitarian law established by the 1949 Geneva Conventions (S/25704).

A novel piece of legislation within the ICTY is Article IV, which gives the Tribunal the power to prosecute individuals responsible for committing crimes against humanity (S/25704).

These crimes include:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

The most notable element to this article is 5(g) which explicitly defines rape as a crime against humanity. Rape has never been successfully tried on its own as either a grave breach or a crime against humanity. While it is feasible that rape could be included in the definition of grave breaches under ‘torture or inhuman treatment’ or ‘wilfully causing great suffering or serious injury to body or health,’ its inclusion was never explicit nor prosecuted as such. Alternatively, rape was categorized as a crime against honor under the Geneva Conventions. While this still ruled rape illegal to the international community it, by definition, made assumptions that a raped

woman was somehow dishonorable, contextualizing the role of virginity and chastity when socially constructing the honor of a woman (Copelon, 1994).

The only other mention of rape as a crime against humanity came from Local Council Law No. 10 of the Nürnberg Trials (Khushalani, 1982) where rape had to be proven as a part of a mass or systematic attack. Nonetheless, nobody was prosecuted or convicted of rape as a crime against humanity. Using similar language, the Declaration of the 1993 World Conference of Human Rights in Vienna also outlaws rape, but once again limits the attacks to systematic rape and abuse (A/conf.157/PC/add.). In the ICTY statute, rape must still be proven to be widespread or systematic in order to be tried as a crime against humanity. If rape was listed alongside other violence-based crimes free of genocide-style qualifiers, it would give further agency to these crimes. Nonetheless, its addition to the ICTY reflects the role of such gendered crimes in the Yugoslav wars.

## II. Tetralogy of Rape: Three Cases of ICTY-Convicted Rape and the Case which laid the Groundwork

### **Duško Tadić**

The first case tried by the International Criminal Tribunal for the former Yugoslavia was “The Prosecutor of the Tribunal against Duško Tadić a/k/a “Dule” a/k/a Dušan, Goran Borovnica.” This was also the first case where an individual was charged with rape as a crime against humanity.

On May 23, 1992, just three weeks before they took political control of opstina Prijedor, Serb forces attacked the Bosnian Muslim and Croatian population centers in opstina Prijedor, Bosnia and Herzegovina with artillery and heavy weapons. They forced Bosnian Muslims and

Croats out of their homes using intensive shelling and seized their property for use by the Serb forces. From there, they forced their prisoners to march in strict column-like rows to one of three Serb-established detention camps in the opstina, randomly plucking members of the march out of line to shoot or beat them on the spot. The thousands of Bosnian Muslims and Croats who were taken were confined in either the Omarska, Keraterm, or Trnopolje detention camps. By May 25, 1992 the three camps officially began taking prisoners. Over the next several weeks they rounded up more non-Serbs from Kozarac, Prijedor town, and other places in the opstina to send to the camps. Duško Tadić, the Serbian Democratic Party leader, participated and led many aspects of the attack, seizure, murder, and maltreatment of the people in opstina Prijedor both within and outside of the detention camps between May 23, 1992 and December 31, 1992 (IT-94-1-I).

While the atrocities that occurred in each camp were similar, their inmate composition varied. The Omarska detention camp held many intellectuals, professionals, and political leaders. All the prisoners were male except for 40 women who were kept in the administrative building. This site also served as the location for internment interrogations. Each prisoner was given only one starvation ration per day with only three minutes to eat. They were given no bedding, change of clothes, or medical care. On a daily basis, prisoners experienced severe beatings with wooden batons, metal rods and tools, lengths of thick industrial cable with metal balls attached to the ends, rifle butts, and knives. Both men and women were beaten, tortured, raped, sexually assaulted, and humiliated (IT-94-1-I).

The Keraterm camp was held at a former ceramics factory in Prijedor. They experienced very similar conditions as the Omarska camp, particularly physical and psychological abuse, assaults, and killings. The Trnopolje camp was held at the former school in the Trnopolje village.

This camp hosted men, women, and children who were almost exclusively from opstina Prijedor. Here, the female detainees were sexually abused, murdered, and physically and psychologically abused (IT-94-1-I).

While Duško Tadić played an active role in all three camps, he spent a considerable amount of time at the Omarska camp. There, he and other Bosnian Serbs physically beat prisoners and forced women to lick his and his fellow soldiers' buttocks and genitals in addition to forced vaginal penetration. Prisoner F, who was brought to Omarska in early June 1992, was forced to have sexual intercourse with Tadić between June and August 3, 1992. For these crimes he was charged with rape as a crime against humanity, among other grave breaches of the Geneva Conventions, violations of the laws or customs of war, and crimes against humanity. When his case reached the court, he was eventually convicted of five counts of inhumane treatment as a crime against humanity and five counts of violations of the laws or customs of war (IT-94-1-I). He was sentenced to 20 years imprisonment on January 26, 2000 and served his sentence in Germany.

Tadić's crimes met the criteria for a crime against humanity, but the prosecutors were unable to make a strong enough case because his victim was unable to testify in court. Nonetheless, he was the first person charged and actively prosecuted with rape as a crime against humanity. In the final sentencing judgment, the ICTY commented on the inclusion of Duško Tadić's rape charge as a crime against humanity, stating "this follows from the requirement that crimes against humanity be committed on a widespread or systematic scale, the quantity of the crimes having a qualitative impact on the nature of the offence which is seen as a crime against more than just the victims themselves but against humanity as a whole" (IT-94-1-I).

## **Dragoljub Kunarac**

The first case which successfully prosecuted rape in the ICTY was “The Prosecutor of the Tribunal against Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovać, Zoran Vuković, Dragan Zelenović, Dragoljub Kunarac, Radovan Stanković.” The crimes contained within this case occurred in the Foča region of Bosnia and Herzegovina, which borders both Serbia and Montenegro. In the 1991 census, the region was 51.6% Muslim, 45.3% Serb, and 3.1% other, making it problematically inter-mixed. On April 7, 1992 Foča was taken over by the Bosnian Serb army along with the Serbian and Montenegrin irregular army. Their initial attacks ended between April 16 and 17, 1992 (IT-96-23-I).

In their attacks Serbs arrested Muslims and Croats and separated men and women to place in detention camps where they were killed, beaten, and sexually assaulted. The men were sent to Foča Kazneno-Popravni Dom (Foča Correctional Facility), one of the largest prisons in the Former Yugoslavia. Women, children, and the elderly were sent to modified houses, apartments, and motels or detention facilities in Buk Bijela, Foča High School, and the Partizan Sports Hall. Many of these detention facilities were run like brothels where women were subjected to degrading and humiliating conditions, brutal beatings, and sexual assaults which included rape (IT-96-23-I).

Dragoljub Kunarac, born on May 15, 1960, was a Serb from Montenegro. He was the paramilitary commander and the commander of the special volunteer unit of non-local irregular Serb soldiers from Montenegro. He was the leader behind most of these attacks and set up his headquarters at Ulica Osmana Đikića no. 16, a house in the Aladža neighborhood of Foča. There, he and at least ten soldiers sexually assaulted Muslim women. He took victim FWS-87 to

headquarters on two separate occasions where she was raped by other irregular Serb soldiers. In July 1992 he forced FWS-75 and D.B. to headquarters where they were raped more than five times over the course of their detainment. On one occasion, D.B. was taken into a separate room by Kunarac where he sexually assaulted her while FWS-75 was gang raped in another room for approximately three hours by more than 15 soldiers. They subjected her to vaginal and anal penetration and fellatio. At one point one of the soldiers threatened to cut off her breasts. In her other encounters at headquarters, FWS-75 was raped by one to three soldiers in a row (IT-96-23-I).

In mid-July 1992, Kunarac took FWS-183 along with two soldiers to the banks of the Cehotina River in Foča. He threatened to kill her and her son while questioning her about communicating with Muslim forces. Dragoljub Kunarac raped FWS-183 following the altercation. Soon after at the start of August, he raped FWS-191 and aided and abetted the rape of FWS-186 by a soldier in an abandoned house in Trnovac. FWS-186 and FWS-191 were kept in this house for approximately six months. Kunarac returned regularly to rape FWS-191 continually over that time period (IT-96-23-I).

On August 2, 1992 Kunarac took FWS-75, FWS-87, FWS-50, and D.B. to headquarters where there were already a few other women prisoners waiting. Kunarac and three others raped FWS-87 while FWS-75 was raped the entire night. FWS-50 was raped by vaginal penetration by a Montenegrin soldier who then threatened to cut off her arms and legs and take her to church where he would baptize her. On or about the same date, Kunarac transferred FWS-75, FWS-87, and two other women from the Partizan Sports Hall to Miljevina after they allegedly spoke to reporters the previous day about the living conditions in Partizan. He detained three of the women in a house owned by Nusret Karaman, a Muslim living in Germany at the time. The



women were later joined by more women and girls, some as young as twelve and fourteen years old. Between August 2 and October 30, 1992 the number of women and girls totaled nine. The Karaman house was run like a brothel for the pleasure of the Serb soldiers (IT-96-23-I).

Despite his many efforts in court, the ICTY rejected Kunarac's alibi and charged him with a total of 11 counts of torture and rape as violations of the laws or customs of war and torture, rape, and enslavement as crimes against humanity. In their final judgment on June 12, 2002 the court concluded that "the campaign was successful in its aim of 'cleansing' the Foča area of non-Serbs" (IT-96-23 & IT-96-23/1-A). Dragoljub Kunarac was sentenced to 28 years imprisonment, a sentence which he is still serving in a prison in Germany. Radomir Kovač was also charged with rape and outrages upon personal dignity as violations of the laws or customs of war and rape and enslavement as crimes against humanity. For his crimes, Kovač was sentenced to 20 years imprisonment in Norway where he is currently serving his punishment. Zoran Vuković was charged with torture and rape as violations of laws or customs of war and torture and rape as crimes against humanity. He served his 12-year imprisonment in a prison in Norway (IT-96-23-I).

### **Anto Furundžija**

The second case that convicted a war criminal of rape was "The Prosecutor of the Tribunal against Anto Furundžija." These atrocities occurred in the Lašva Valley of the newly-independent nation of Bosnia and Herzegovina. Between January and mid-July 1993 the Croatian Community of Herzeg-Bosna (HZ-HB) engaged in armed conflict with armed forces of the republic of Bosnia and Herzegovina. HZ-HB joined the Hrvatsko Vijeće Obrane (Croatian Defense Council, HVO) to continue fighting the Bosnian forces. HVO attacked villages

inhabited by Bosnian Muslims in the Lašva River valley region in central Bosnia. The invasion resulted in numerous deaths and injuries (IT-95-17/1).

Other civilians were detained or transported from their homes and forced to perform manual labor. Others were tortured and subjected to physical and mental abuse as well as sexual assault. Hundreds of Bosnian Muslims were arrested by the HVO and taken to Vitez Cinema Complex and Vitez Veterinary Station. These were being used as detention facilities in Dubravica, Vitez. Anto Furundžja, born on July 8, 1969, was the commander of the Jokers of the HVO and set up a headquarters, called the “Bungalow”, in Vitez. On May 15, 1993 Furundžija and another soldier interrogated witness A at the Bungalow. He rubbed his knife along her inner thigh and lower stomach, threatening to put his knife inside her vagina should she not tell the truth when answering his questions. Afterwards witness B, a Bosnian Croat soldier who was badly beaten prior to this event, was taken to another room with witness A. Once in the room, witness A was forced to have oral and vaginal sexual intercourse with the soldier accompanying Furundžja. Anto Furundžja did nothing to stop or impede the soldiers actions (IT-95-17/1).

In court, Furundžja submitted several appeals, all of which were dismissed. He was charged and convicted on torture or inhumane treatment as a grave breach of the Geneva Conventions and torture and outrages upon personal dignity including rape as a violation of the laws or customs of war. On July 21, 2000 he was sentenced to 10 years imprisonment in a prison in Finland. He has since been released after completing his sentence.

### **Hazim Delić**

The final case which prosecuted rape in the ICTY was “The Prosecutor of the Tribunal against Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo.” This case covers crimes

committed in the Konjic municipality of central Bosnia and Herzegovina which, as of the 1991 census, was composed of 55% Muslims, 26% Croats, and 15% Serbs. Despite its demographic diversity, it was significant because it contained a large factory for arms and ammunition, several military facilities, and served as a transportation link between the Bosnian cities of Mostar and Sarajevo. The trouble began in this area in May 1992 when Bosnian Muslims and Bosnian Croats attacked and took control of villages within the municipality which contained predominately Bosnian Serbs. They expelled Serbs from their homes and held them at collection centers. Women and children were kept at a local school while men and some women were taken to a former JNA facility in Čelebići (IT-96-21).

Prisoners at the Čelebići camp were killed, tortured, sexually assaulted, beaten, and subjected to cruel and inhumane treatment. The camp was open from May 1992 to October of the same year after which many of the prisoners were moved to other detention camps, being imprisoned for up to 28 months. Among the main criminals in charge of this project was Hazim Delić, born on May 13, 1964. He served as the Deputy Commander of the camp from May to November 1992. After the departure of the previous Commander Zdravko Mucić left, Delić became Commander of the camp until it closed in December 1992. Another key actor in these crimes was Zejnil Delalić, who was born on March 25, 1948. He coordinated the activities of Bosnian Muslim and Bosnian Croat forces in Konjic between April and September 1992, served as Commander of the First Tactical Group of the Bosnian Muslim forces between June and November 1992, and served as the authority over the Čelebići camp and its personnel. The last of the main offenders, Esad Landžo was born on March 7, 1973 and served as a guard at the camp throughout its entire existence (IT-96-21).

Between May 27 and August 1992, Hazim Delić and others forced victim Grozdana to repeated acts of forcible sexual intercourse. On one occasion she was raped in front of other soldiers, and on another instance she was raped by three men in a row in one night. Between June 15 and August 1992 he subjected witness A to repeated incidents of forcible sexual intercourse, both vaginal and anal. Delić raped her in his first interrogation with her and continued to rape her every couple of days over the next six weeks (IT-96-21).

For his crimes, Hazim Delić was convicted of murder and torture as grave breaches of the Geneva Conventions and inhumane treatment as a violation of the laws or customs of war on April 8, 2003. He served his 15-year sentence in a prison in Finland. Zdravko Mucić was given the same convictions with fewer counts for a sentence of 7 years imprisonment, which he served in Finland as well. Esad Landžo was convicted of murder and torture as grave breaches of the Geneva Conventions and cruel treatment as a violation of the laws and customs of war. He was sentenced to 15 years imprisonment which he served in Finland. Zejnil Delalić was found not guilty on all counts because the court could not find sufficient evidence that supported he had clear command and control over the Čelebići camp and its guards.

### **Case Analysis**

When viewing these cases as a group, a clear trend emerges which echoes back to the arguments made by early feminists who debated and conceptualized the ICTY. When examining the Delić case, we see that the roles played by Bosniaks and Serbs were reversed where Bosnian Muslims and Croats became the aggressors and Serbs became the victims. This role reversal is also apparent in the rulings of the cases, where Delić was unable to be charged with rape directly

as a crime against humanity. Rather, he was charged with torture by way of rape. While subtle, there are nuances to this ruling when compared to that of the Kunarac case.

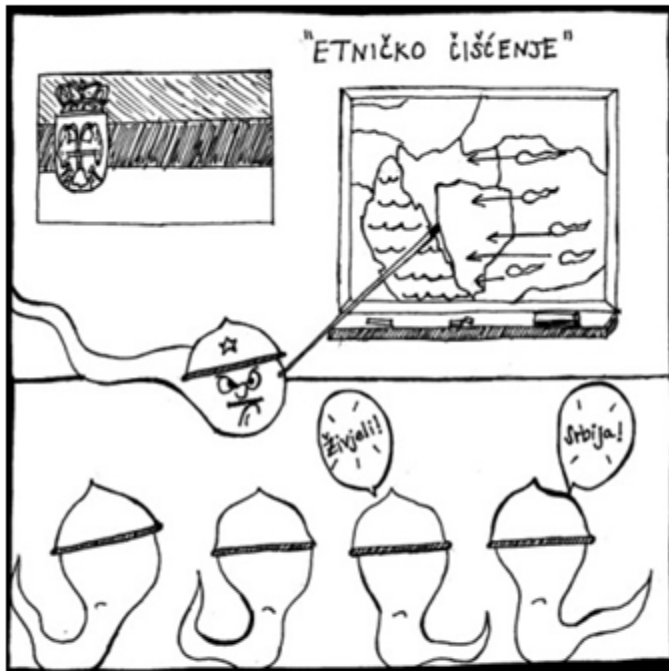
Under the provisions of the statute of the ICTY rape must meet certain criteria to be prosecuted as either a grave breach of the Geneva Conventions (Article II), violations of the laws or customs of war (Article III), or as a crime against humanity (Article V). In each case three criteria must be met. To qualify under Article II, it must be proven that the victims are a protected person, the conflict must be an international armed conflict, and the act must have a close nexus with the armed conflict. In the 1949 Geneva Conventions protected persons are described as “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals” (75 UNTS 287).

In this context, the ICTY uses the term ‘group’ to mean an ethnic or national group, but is not explicit in the original resolution as to what a ‘group’ may actually define. If a strictly ethnic definition is applied, women may still receive protection in the tribunal; however, they must also meet an ethnic criterion. While the term ‘group’ is not clearly defined by the ICTY, it has been exclusively used to refer to an ethnic group rather than a gendered one. Women may receive protection because they are in fact women, but they do not qualify as a ‘protected persons’ until their ethnicity proves to play a role in the crimes committed against them. For example, a Bosnian woman who is raped in a Serb-dominated territory is considered ‘protected’ because she is in the ethnic minority, not because she is a woman. Thus, under the requirements of grave breaches, the protection of women under the Geneva Convention is completely dependent on the ethnicity and immediate geographic location of the victim during the crime, and independent of gender. Following this logic, the fact that the victim is a woman is merely coincidental and does

not play a role in prosecuting the actual crime. In this context, violence against women—rather than violence against Bosnian women or even violence against Bosnians as an ethnic group—is not substantial enough of a classification to be considered “protected.”

Despite previous definitions of ‘protected persons’ (i.e., ethnic groups), women as a defined population should also qualify as a defensible group under particular circumstances. There is room to expand on the language used to define protected persons in Article IV of the Geneva Conventions, which defines said persons as those who find themselves in “the hands of a

## ETHNIC CLEANSING



**Ethnic Cleansing:** Serb sperm as soldiers planning systematic ethnic cleansing (“Etničko Čišćenje”) attacks on Bosnia and Croatia (“Živjeli!”=Cheers; “Srbija!”=Serbia!). It reveals the relationship between gender and ethnicity as dual motives for the rape of non-Serb women by Serb men.

sexual/reproductive quality is exclusive—or at least much more common—to females by nature.

MacKinnon elaborates on this idea, noting that the Tribunal believes “if they are gendered

Party to the conflict or Occupying Power of which they are not nationals.” While ‘nationals’ in South East Europe quite clearly refers to ethnicity, the general concept of establishing a majority-minority balance can and should be expanded to the uneven balance between men and women in the context of war. Catherine MacKinnon critiques the hesitation to such an expansion, concluding that “atrocities committed

against women are either too human to fit the notion of female or too female to fit the notion of human” (MacKinnon, 1994).

Wartime rape is seen as ‘too female’ as its

attacks, they are not ethnic” (MackKinnon, 1994). Understanding gender and ethnicity as two mutually exclusive categories of atrocities prohibits the proper prosecution of these crimes. While ethnic cleansing elevates everyday rape into a strategic genocidal act, the gendered element must never be underplayed or ignored. It is this gendered element that is the single consistent thread running through all rapes in both peacetime and wartime settings, and what allows for ethnic motivations to utilize gender to make an impact.

Many feminists believe that the addition of gender to the list of protected classes is essential. For example Dubin argues that “the thousands of rapes committed in the former Yugoslavia and Rwanda reflected not only a desire to persecute people of another ethnicity or religion, but also a desire to humiliate and terrorize women specifically because of their gender” (Dubin, 47). In the context of wartime rape, gender and ethnicity should not be kept separate in the minds of prosecutors, as they both play a critical role in the motivation of the crime itself. When addressing this issue, feminists have tended to choose one of the two static camps described by Engle which favored gender or ethnicity rather than acknowledging the role they both play in the Yugoslav context of wartime rape.

For rape to qualify under Article III it must be proven that the victim be a person taking no active part in the hostilities, there must be an armed conflict, and the act must have a close nexus with the internal or international armed conflict. To qualify under Article V, it must be proven that there is an armed conflict, there must be a widespread or systematic attack on the civilian population, and the act must form part of the widespread or systematic attack. In the case of Kunarac, the court found that the rapes of Bosnian Muslim women were part of a greater plan for Serbs to ethnically cleanse the area of non-Serbs. Under this decision, rape clearly met the criteria for a crime against humanity. However in the case of Delić, where Bosnian Muslims and

Croats were the aggressors, the prosecutor failed to find that the rapes were either widespread or systematic. As such, they were not found to meet the criteria for prosecution as a crime against humanity and were instead contained within the other torture-based crimes. In the final judgment of the Furundžja case, Judge Lal Chand Vohrah stated that

“I find myself still of the view that when all things are equal, a person convicted of a crime against humanity commits a more serious crime than a person convicted of a war crime and ordinarily this additional gravity requires that the person convicted of a crime against humanity should receive a longer sentence than a person convicted of the same act as a war crime. This view would naturally include genocide which, also considered a crime against humanity, is similarly inherently more serious than a war crime; all things being equal, it should be recognized and punished as such” (IT-95-17/1-A).

Through this judgment he establishes the importance of crimes against humanity within the international court.

When looking back on the arguments made by MacKinnon and Copelon, it appears that MacKinnon’s camp of ideology eventually won out in the courtroom. Rape was only directly prosecuted when the crime was also proven to be part of a larger, systematic attack on a targeted population. Otherwise, it was prosecuted alongside torture and not given equal agency as rapes considered to be more organized.

Rape as a crime against humanity acknowledges that the gendered element of the attack is important but not sufficient for prosecution. Peacetime rape does not qualify as a crime against humanity, nor does wartime rape that lacks the systematic element of ethnic cleansing. As described in the judgment, in order to be suitable for prosecution by the Tribunal wartime rape



must pass an undefined quantitative threshold that prompts an impact greater than an individual rape, meaning it must be part of a widespread or systematic attack. Killing a civilian in isolation of a greater political motivation is still considered a crime by the ICTY's standards (i.e., Grave breaches of the Geneva Conventions of 1949, Article 1(a)), but it is not genocide as it does not necessarily directly impact that individual's group. As with the widespread impact of war itself, wartime rape must produce a widespread effect on humanity. Without the alignment of the 'qualitative impact' made by armed conflict and wartime rape, the two cannot be categorized as crimes appropriate for prosecution by the ICTY. If rape does not meet this criterion, it will again be seen as an accessory of war rather than a true systematic tool.

While there is uncertainty in defining what is a 'qualitative impact' there is even greater uncertainty in defining who qualifies as members of humanity. With the focus on ethnicity, there is a tendency to group victims based on their ethnicity. A consequence of abiding by this logic is that women as a class of humanity are underserved by being compartmentalized into their respective ethnic groups rather than being kept whole as a gender. Their role as victims may bring justice to a certain group of women within certain ethnic groups but it fails to challenge the patriarchal dimension that allows for rape to occur. To appropriately address the issue of rape—without being exclusive to wartime rape—women must be seen as group within humanity that is independent of their perceived ethnicity. The main hurdle that must be overcome is framing crimes against women within the definition of humanity.

There is a high incidence of rape in absence of ethnic motivation which relies much more heavily on patriarchy. Rape was constant on all sides of the war and even occurred within ethnicities. While there were plenty of incidences of rape that were coupled with the effects of ethnicity (i.e., inter-ethnic rapes), there were also many rapes that occurred in wartime but within

the same ethnicity (i.e., intra-ethnic rapes). If we understand inter-ethnic and intra-ethnic rape as mutually exclusive acts, rather than two similar consequences of patriarchy, we ignore the true victims of this conflict: women. With the separation of these two types of rape, only a subsection of women are actually being represented in court. The separation of wartime and peacetime rape fails to uphold true gains towards contextualizing violence against women as a protected class of people in the eye of the ICTY. A better way to view rape in the war context is to combine all rapes, citing the victimized group as violence against women. It is imaginable to classify violence against women as a protected group, thus giving agency to all female victims of rape, rather than women of a particular ethnicity.

### III. Ethnicity is Essentialized and Misunderstood

Prior to the formation of the ICTY rape has consistently been viewed as an accessory to war rather than a discrete motivation. It was seen as a problem of the private sector that should be dealt with on an individual basis. It has always been prosecuted in combination with other war tactics, and grouping rape together with other crimes made it unclear if women as a population saw true justice in the courtroom. Rape occurs daily in both wartime and peacetime and there is no novel element to rape during wartime. Legal scholars have struggled to define wartime rape and peacetime rape as separate, and thus have not been able to independently prosecute it outside the context of war at the international level as a crime against humanity. While the physical act of rape may be similar, if not identical, in each setting its motivation qualifies it as worthy or not for prosecution by the ICTY.

In the Yugoslav Wars, the gendered element of wartime rape seemed more apparent to outsiders when viewed within the context of ethnic cleansing. Rape became a tool of war and

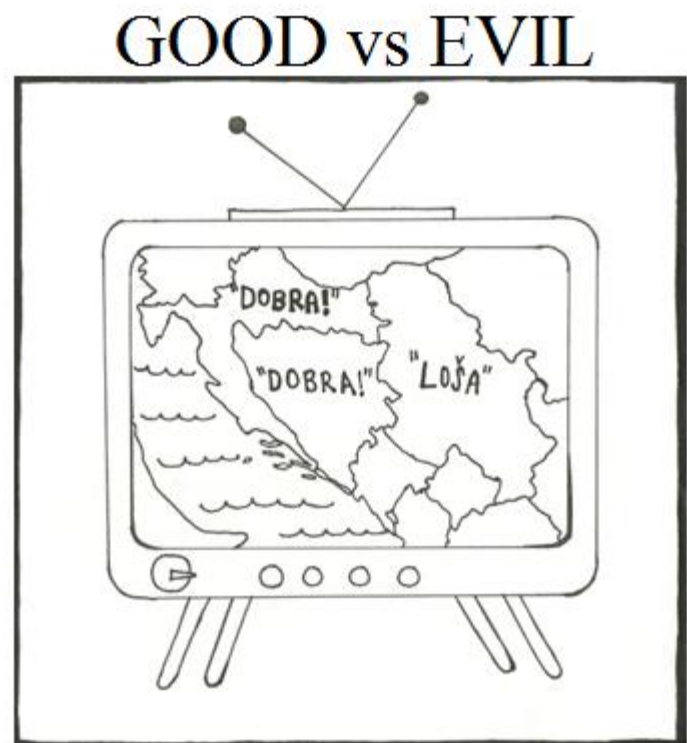
served a very particular purpose. Women were representatives of their nations, acting as symbols of nationalism and ethnicity, the “morale and identity of her society” (Kovalovska, 2012. For these reasons men used rape to humiliate and defile these women of opposing ethnicities, thus defiling the victims’ nations as well. In this context, sexual violence went well beyond individual sexual aggression and took on a wide-spread, systematic motivation that was rooted in essentialized ideas of ethnicity, but made possible by the patriarchal norms in place in the Balkans. Rape has always been a tool for men to extend power over women. The epidemic of rape was understood to be systematic via ethnic cleansing during the war, but no such understanding was made to describe the continued problem of men raping women everyday all around the world. It appears that once the use of rape in SFRY was seen as ethnically systematic, it crossed the threshold of being relevant and important to the international community.

The interplay between gender and ethnicity is not uniform across all conflicts involving rape. For example, the Holocaust enacted genocide based on fascism, but lacked well-articulated gendered perspectives in relation to the victims. During World War II, Adolf Hitler and the Nazi Party used genocide to expel Germany and Western Europe of people of Jewish decent and other practicing Jews. Nazi ideology was rooted in promoting the Aryan race which exclusively included a sub-section of speakers of Indo-European languages. Similar to the detention camps in the Former Yugoslavia, the Holocaust had concentration camps that held captured individuals based on their ethnicity. While women were often raped in these camps, the widespread attacks on individuals regardless of gender created an ethnic-centered connotation. Also, the attack on Jewish Europeans was very one-sided where the Nazi Party members were the actors and Jews were the victims. This made the intention of the conflict very clear; defining it in terms of ethnicity almost exclusively.

Using precedence from the Holocaust, legal scholars may assume that the rape and confinement of thousands of Balkan women be considered a primarily ethnic crime. While the systematic ploy of Serb forces was to gain ethnic superiority, they sexually exploited women in such an uneven distribution as compared to men and did so by means of strictly gendered crimes such as rape and forced pregnancy. While genocide was the underlying motive of Serb aggressors, they executed their plan by means of gendered crimes. Unfortunately, “rights that human beings have by virtue of being human have not been rights to which women have had access, nor have violations of women as such been part of the definition of the violation of the human” (Mackinnon, 1994). This longstanding struggle to see women’s rights in the context of human rights is evident in the prosecution and understanding of the Holocaust and may explain why the rapes in the Former Yugoslavia struggle to be seen as truly gendered crimes.

Anna Höglund elaborates on the view of gender in opposition to ethnicity, stating that “ethnic cleansing [...] was condemned rather than the sexual abuses”

(Höglund, 2003) because any acknowledgement of a punishable crime being gendered, rather than ethnic, would challenge the constitutive gender norms that allowed for the rapes in the first



SFRY Republics: the polarized view that Serbia is ‘bad’ (“loša”) and Croatia and Bosnia are ‘good’ (“dobra”). Viewed on a television screen, this image shows how the rest of the world simplified the conflict for convenience, which ultimately left the complex issues misunderstood.

place. Gender-based violence has always been dealt with in the private sphere, and shedding light on rape with a gendered lens would move it into the public sphere. It appears simpler to mask these gendered rapes as a consequence of an ethnic conflict—rather than to acknowledge them as being simultaneously gendered—in order to maintain this norm. However, if gendered crimes are concealed as ethnic ones, there must be further work done to categorize gendered crimes as something when the crimes lack any sort of ethnic motivation. Out of convenience and simplicity, it seems that wartime rape is framed in terms of ethnicity. Using an ethnic lens creates a clear alignment with the rest of the conflict—which was believed to be motivated by long-standing ethnic hatreds—and was therefore easier to digest than having to also challenge the over-arching, and often overwhelming idea of patriarchy.

The ideology behind ethnic cleansing challenges the supposed separation between ethnicity and gender. Mujeeb Khan describes the public discourse about the conflict in Bosnia as “ill-informed” and “falsely referring to ‘a civil war’ resulting spontaneously from ‘centuries of ancient hatreds’” (Khan, 1997). This international perspective was limited to an ethnic understanding of the war, which was based on a goal to obtain “global integration and harmony which are allegedly produced by communications, shared norms, and the alleged triumph of economic and political liberalism” (Khan, 1997). Pursuing an argument about the conflict which focused on women as a gender rather than as part of an ethnic group would create a misalignment with the ethnic framework put in place by the international community. If their aim was to create true global integration on the basis of ethnicity, the best way to prove success towards that goal would be to prosecute international crimes with the lens of ethnicity itself.

When evaluating the targeting of women based on their “true” ethnicity, it should be noted that while the motivation may appear to be based on ethnicity, it is only based on the ill-

informed understanding of ethnicity rather than the true genetic or even cultural definition. For this reason, only the gender of the victim is confirmed, leaving the ethnicity to be determined by both the victim and perpetrator. While certain assumptions are made that the assumed and actual ethnicity align, the act of rape is carried out based on the perpetrator's ideas of ethnicity exclusively. In the Yugoslav context, this idea is formed by an uninformed view of genetics and inheritance.

These ideologies become essentialized because of the world's view of ethnic harmony in addition to the actual understanding of the ethnicity itself. For example, "one particularly strong and largely unchallenged belief seems to be that, if a Muslim egg were inseminated with a Serbian sperm, a Serbian child would ensue" (Engle, 788). At this time and in this region, the understanding of genetics and ethnic inheritance was considerably uninformed. They believed that ethnicity was a simplified heritable trait, rather than a complex collection of characteristics that include genetic traits as well as influence from environmental conditions. Under these assumptions Serb forces constructed a model suggesting that the "ethnicity" of a child is exclusively determined by the ethnicity of the father, with no genetic contribution from the mother. Thus a child born of a Serb father and a Bosnian mother would be considered fully Serb under this definition. However modern human genetic theory understands genetic inheritance to mean equal contribution from each parent. In this same example, the child born of mixed parentage would be genetically Serb and Bosnian. The essentialized and sexist understanding of ethnicity conflicts with genetics, yet Serb forces were able to not only reinforce salient ideas of patriarchy, but were also able to exploit women sexually to fulfill their "genetic" control over the Balkans. Women became the means to carry out their plan.

Ethnicity in this region is not easily defined, yet it is still used as the main tactic to identify individuals in the Former Yugoslavia. This compromised the level of protection women received under the ICTY's definition of protected persons and crimes against humanity. In similar conflicts that preceded the Yugoslav Wars the actors, or states, were clearly defined and their citizens were almost always geographically contained within the same region. There was a very clear alignment with nation, state, ethnicity, and even language. In the SFRY these lines were considerably blurred due to the multi-ethnic states that resulted from the many boundary changes in the region. In a legal context this required additional commentary on the "true" ethnicity of the victims and the geographic location where their act was committed. Because the ethnicity of each individual—as well as the ethnicity of many of the diverse regions within SFRY—are difficult to clearly define, it was often difficult to prosecute these crimes.

An important distinction to make about Yugoslavia is that each republic or nation has always existed on some ideological level, regardless of its political position or level of independence within the state. With the loose alignment of religion, ethnicity, and language Yugoslavs consistently saw themselves as separate from the Yugoslav identity constructed by Tito. For example the 1981 census immediately following Tito's death showed that only about 5% of individuals living in Yugoslavia self-identified as "Yugoslavs" and instead self-identified along national lines. As compared to the continental United States where the general public equates ethnicity with race in most non-academic settings, ethnicity has taken on a more cultural meaning in South East Europe.

Bosnia and Herzegovina is particularly problematic given the emphasis on ethnicity in Balkan culture. In the 1981 census in Yugoslavia, the republic of Bosnia and Herzegovina was 39.52% Muslim, 32.02 % Serb, and 18.38% Croat. 75.08% of the population was Croat in

Croatia, 90.52% of the population in Slovenia was Slovene, and 85.44% of the Serbian population was Serbs. In each of these other three cases there was a tighter alignment with the ethnic composition of the republic and the nation. Bosnia and Herzegovina could not attain the same level of ethnic homogenization as the other Yugoslav republics. When the internal borders of Yugoslavia became international, there was no clear geographic boundary in which to group Bosnians, making it more difficult to replicate Croatia and Slovenia who established themselves as independent nation-states. This also reveals the assumption that nation-states must be homogenous to some extent.

#### IV. Implications of War

In this section I discuss the situation in post-war Yugoslavia for women victims and the children born of rape. Regardless of how women are eventually categorized as victims, they have still been given some agency when facing their accused. In the ICTY, women can act as prosecutors in the trial by giving testimony and facing their perpetrators directly. In this way, they can receive some level of individualized justice previously unavailable to them. In all other international courts, perpetrators were either tried in groups or only tried if they were in a high-authority leadership position. They were often protected from sentencing through the ambiguity of group trials. Individual-based trials allow each man to be held accountable for his specific sexual acts against specific women.

The one-on-one style of prosecution supports the argument in favor of supporting female victims based on their gender rather than ethnicity. While the requirements for conviction rely on a quantitative level of attack which eventually affects a broader group of people, the individualized trials highlight the effect on individual women as well. Group trials have the



potential to clump victims into their larger group—namely, their ethnic group—and downplay the significance of each female victim. In the setting provided by the ICTY, women become the agents capable of receiving personalized justice. While some women have benefited from the ICTY, the majority of women who experienced rape and other sexually motivated crimes did not have trials in the court. Their crimes were undocumented and not prosecuted. For these women, rape remains a lived experience.

Wartime rape was not a novel concept in the Yugoslav Wars of the 1990s. When there is war, there is most often rape. What made wartime rape different in the context of Yugoslavia was how the victims portrayed themselves to their communities. Inger Skjelsbæk used a series of interviews with rape victims to define two categories of women who were raped through ethnic cleansing (Skjelsbæk, 2006). The ‘ethnic survivor’ represents the woman who has no guilt for being raped; rather, she seeks legal justice and is often open about her attacks with her family. She seeks revenge and hopes to gain agency through activism. The court provided an opportunity for this class of women to face their offenders and receive a form of justice for being raped. The ‘gendered survivor’ represents the woman who has been hindered by wartime rape and assumes blame and shame for what happened to her. She is too ashamed to share her stories with her family and does not acknowledge her attacks. Overall, she has been defeated by the crimes committed against her and struggles to overcome her past. By self-positioning themselves into these roles, the women play an active role in defining themselves post-conflict.

The view of raped women and their children born of rape during the Yugoslav Wars played a formative role in their reintegration back into their respective communities. Women who struggled with this reintegration would likely be categorized as a ‘gendered survivor’ per Skjelsbæk’s descriptions. For instance, there has been a clear digression from what both the

Muslim and Catholic churches have said about children born of war and the response of the members of those respective religions. The religious entities supported the organic reintegration of these women and children back into their communities, but the communities still saw victims of rape as inferior, even taboo. In turn, they were not openly welcomed back into their groups. This digression represents the clear difference between idealized reintegration and the realistic lack thereof (Salzman, 1998).

Like many religious institutions, Islamic religious culture views the purity and protection of its women symbolically (Salzman, 1998). In this context, rape is seen as worse than death itself, thus emphasizing the importance of honor in Islamic culture. The Koran—the central religious text for Muslims—“does not extensively address the issue of rape among Muslims, let alone between Muslims and non-Muslims” (Salzman 1998). There has clearly been some level of interpretation amongst Muslims that has led to the idea that rape results in a lack of honor, yet the idea has still become salient enough to have a widespread impact on individual religious understandings of honor. In fact, when a woman claims to be raped she must have four respectable Muslims as witnesses in addition to being automatically accused of adultery. The likelihood of attaining both the appropriate witnesses and proper legal representation serves as a strong enough deterrent for seeking legal justice, and when coupled with having to prove innocence of adultery, it is not a surprise that very few incidences of rape are reported or prosecuted.

Based on Islam’s pejorative view of rape which states that women who have had any form of sexual contact—including rape—are not fit to marry a Muslim man, it is interesting that religious leaders have digressed to promote acceptance of victims. According to the World Council of Churches (WCC), Muslim leaders have encouraged young men to marry women

victims, despite having been raped and defiled. Furthermore, women who have had abortions within the 120-day legal limit were prompted not to be viewed negatively, regardless of abortion being a very taboo subject within their culture. Many women who were impregnated by Serbs or other non-Muslims carried their children to term, thus introducing them into Islamic communities. Muslim leaders asked these communities to embrace both the children within their individual families as well as the children who were left without parents after being abandoned. While the dialogue created by these leaders embraced the strength of the Muslim faith within Islamic communities, it was highly idealized and poorly accepted.

Islamic communities had a hard time seeing these women—and by extension, their children—as victims due to their strong religious beliefs, despite the new rhetoric crafted by the religious leaders. In a more traditional understanding of womanhood, women should always be accompanied by a man who has the means to protect and honor her. In the context of the war, Muslim women who were raped were categorized as unaccompanied women rather than victimized women. The conflict in Bosnia clearly represented an extraordinary case in which women victims did not choose to physically be alone when they were captured, rather they were taken from their homes regardless of a Muslim male presence. In the post-war setting Bosnian Muslims became too far distant from the conflict to see women as victims, and relied on their original understanding of women's role in rape. Claudia Card elaborates on the view of Muslim communities, stating “it may be more likely relative to outsiders, judging that a raped woman was ‘asking for it,’ who intend protectionism” (Card, 1996). Card believes that rape is not being viewed with the lens of war, and like religious leaders have supported, victims of the war must be seen as an exception to the standard religious view of rape.

The response made by the Catholic Church has been very similar to that of Muslim leaders. As Salzman describes, “the Croatian Catholic response to victims of rape suffers from similar tensions between religious ideology and cultural practice” (Salzman, 1998). Pope John Paul II prompted his parishioners to embrace women victims in hopes of transforming their offenses into something positive. The terms “rape” and “abortion” are never used by the Pope, but are indirectly referred to. Like in Islamic culture, these issues are very controversial and elicit polarized viewpoints from Catholics. By explicitly avoiding the use of these sexualized violent terms, the Pope reveals the Church’s view on women as ethnic victims, rather than gendered ones. While Catholic leaders supported these victims, they exclusively did so with ethnic lens. In a letter to Archbishop Vinko Pulijic of Sarajevo, Pope John Paul II describes these victims as ones who “have been subjected to violence because of an outburst of racial hatred and brutal lust” (Salzman, 1998). Taking a racial view of women victims conflicts with the Catholic Church’s view on gendered crimes. For example, the Church does not condone abortion under any circumstance, including rape. The avoidance of explicitly acknowledging the rapes is again in line with their view of rape as a whole.

Like Muslim communities, Catholic communities also have reservation about embracing rape victims regardless of the stance made by their religious leaders. These communities do not sympathize with these women, and often look down on them for having abortions. By having an abortion they have not only betrayed themselves, but more importantly they have betrayed God and their Church. Believing that life begins at conception practicing Catholics view abortion as killing, a violation of the Ten Commandments, the Church’s most sacred religious orders. Despite promoting that these children of rape be brought to term, Croatian Catholics have not fully embraced them. There is a certain level of hypocrisy that leaves all victims of rape

unaccepted, where those who had abortions are viewed as unholy and those who carried the children to term are viewed as damaged. In both the Islamic and Catholic examples, the view of raped women goes beyond women being victims of a gendered crime, and is driven by the idea that they have now obtained a new ethnic identity. Not only are women seen as betrayers of their faith (i.e., being unaccompanied, having an abortion), they are no longer seen as ethnically pure.

The identity of raped women was altered in both a gendered and ethnic context; however the positioning of women as victims of ethnic crimes emphasizes the ability of rape to “change” ethnicity. Patricia Weitsman makes three main arguments as to why rape can affect identity to this capacity. She cites the malleability of identity as the main reason for this change, adding that the loosely-defined concept leaves much room for interpretation. Identity itself is socially constructed and therefore is subject to change per the interpretations (i.e., acceptance of rape victims) made by the same society. When understanding Serb identity, it is important to know that a central piece of being Serb is being Serbian Orthodox; a similar piece is also being non-Muslim and non-Bosnian, casting non-Serbs as “the other.” In this way, Serb identity can be both positively and negatively defined based on a clear social construct of ethnicity. In the Balkan context, rape—in addition to religious-based categorizations—becomes highly important in the view of identity.

The second reason Weitsman cites for the perceived changes in perception among victims of wartime rape is the perpetuation of genetic myths about ethnicity and identity. Similar to the Nazi understanding that ethnicity is entirely genetic, the Balkan view of ethnicity is also constructed by essentializing genetics and gender based on patriarchal norms. The idea is that upon being raped, women become infected with Serb sperm and their presumptive children acquire the same fate. As rape victims, Bosniaks are no longer fully Muslim; rather, their

impurities outcast them from their respective communities. The children are not considered to have any Bosniak ethnicity and presume the fate of a Serb born from the vessel of a Bosnian woman. While their identity is understood to be Serb, their biological fathers have no claim over the children throughout their upbringing but will reunite with them upon their maturation to control the new great Serbian state.

Finally, the third reason Weitsman believes women's identity has been morphed through rape is the view of rape in the context of human rights. Historically rape has not been prosecuted as a human rights violation or more specifically, a women's rights violation. In light of the ICTY it has gained footing in the international community as a prosecutable crime, but its ties to ethnicity far outweigh its relevance to gender. For that reason, women are seen as ethnic targets in both the courtroom as well as in their

communities. Coupled with the genetic myths of ethnicity, women are not seen as true victims, do not receive the proper support from their states, and are even scrutinized for what happened to them.

## SKIP IT



**Which One?:** a young child at a doctor's office asking his mother 'Which one?' ("Mama, Koja?") when asked to select his ethnicity ("hrvatski"=croatian; "bosanski"=bosnian; "srpski"=serbian). Confused, she tells him to 'skip it' ("Ga mimoić"). Children born of wartime rape were confused about their ethnicity and self-identification post-war.

With the framework in place that rape alters ethnicity, the children of female victims are also treated with an ethnic lens. In 2005 an Associated Press reporter followed up with a few of these children in Bosnian orphanages (Jahn, 2005). He spoke to one boy whose mother abandoned him after the war because she was ashamed of the crimes committed against her. She and many other women victims refer to these children as “children born of hate.” While their religious institutions support the acceptance of these children, post-Yugoslav communities have not been able to overcome the ethnic implications that accompany these children coming of age. In fact, they often refer to these children as “Četnik babies” (strongly pejorative term for a Serb). These same derogatory ideas about children born of rape are perpetuated in the next generation as well. One boy tells the reporter how he was mocked at school and called “Pero” which is a standard Serbian name. While he was born of a Bosnian mother, his community views him as fully Serb and rejects him. This negative view of children born of rape becomes salient with outsiders and also within the children themselves. As one orphan boy tells the reporter, “I am the product of my mother’s shame.” He understands his place within his community exclusively in terms of ethnicity, and on the basis of ideas that have trickled down since the war from generation to generation.

In even more extreme cases, children were not only abandoned by their mothers and families but were also sold in auction. Adoption at the time was restricted to domestic families (Strupinskiene, 2012) and there was a clear stigma against accepting children born of rape. As a consequence women had to go to extreme measures to rid themselves of their dark pasts. Through a black market system called the “trgovina” (Bosnian word for *store*), women auctioned off their children to international buyers without questioning their motives. There is little to no data on where these children ended up, but due to the nature of the auctions the outcome does not

appear favorable. It is speculated that children were sold into prostitution or domestic slavery, but without documentation of these crimes it is unclear what happened to them. What is most notable in this situation is how far women have been pushed to regain acceptance from their communities. The fact that abandonment or even auctions have become viable options for these women supports that they have greatly struggled to reintegrate themselves.

The taboo nature of dealing with both women and children affected by wartime rape is not exclusive to individual Bosnian communities. On the international level this conflict has been viewed as strongly ethnic, and by extension, out of the scope of international dialogue. The United States has continually viewed the Yugoslav Wars of the 1990s as the culmination of centuries of ethnic hatred. It was framed as a regional problem that did not require international support, or even state-level support for that matter. Charli Carpenter cites the “biological origins” of the crimes as too abstract for the international community to respond. Vulnerable individuals are being harmed (i.e., women and children) and yet there is still resistance from Non-Governmental Organizations (Carpenter, 2007). The conflict morphed into a good versus evil motif, where Serbs became the perpetrators and Bosniaks became the victims; however, due to crimes being committed on all sides, the line between good and evil has been significantly blurred. Within the confusion of placing blame, children are frequently forgotten and not given the proper support to reintegrate.

A plausible stance to be taken by NGOs to support women and children affected by wartime rape would be to frame the conflict as gender-motivated. While rapes were committed on all sides of the war, what remained constant was that women were the victims throughout. Addressing this conflict in terms of gender challenges a much larger institution than just ethnicity. The traditional gender norm of a patriarchal society where men outrank women is



clearly in place in the Balkans even to this day. Looking at victims as women rather than as Bosnians contests this norm and creates problems for NGOs that go beyond seeking justice for women and children affected by the war. Also, within the realm of NGOs and women's rights, human trafficking has taken center stage and has been established as worthwhile cause for foreign investors to invest in. As Carpenter notes, "children affected by armed conflict is a relatively recent idea in human rights discourse" (Carpenter, 2007). There is room for expansion in this effort, but for the time being the lack of discourse leaves this generation of children underserved.

The lack of international support parallels the lack of support from the state's end. When prioritizing the means by which the state government will intervene with post-war ramifications, they had to choose more immediate problems such as displacement of families, economic rehabilitation, and resurrection of physically destroyed cities and villages. The social problems of identity and reintegration did not cross the threshold of immediacy required to obtain government intervention. While this may be due to rape and the women and children affected by it being taboo, the true motives behind ignoring the problem is unknown. Since rape has consistently been seen as a private crime that is meant to be dealt with in the private sphere, it may not seem within the jurisdiction of the state to intervene. Despite this general pushback against the issue, the Bosnia and Herzegovina Ministry of Foreign Affairs has made some small improvements concerning child-related legislature that protects them from immediate harm. Nonetheless, Non-Governmental Organizations have made attempts to step in and supplement, despite often falling short of addressing the main issues at hand.

While the number of NGOs acting in the Former Yugoslavia is limited, there are several whose work is clearly addressing the problems with the reintegration of women and children

back into their respective communities. Medica Zenica ([www.medicazenica.org/](http://www.medicazenica.org/)) is a medical clinic and rehabilitation center located in Zenica, Bosnia and Herzegovina. In addition to providing immediate medical care to women and children, Medica Zenica administers counseling, provides gender-based advocacy, and contributes to preventative work. Through Dječija Kuća Medica (Children's Medical House), Medica provides education and therapy through both traditional methods and creative work. Specifically they work with children who have directly or indirectly survived violence or trauma, witnessed it, or who are currently at risk of being exposed to it based on their current living situation. Between the years of 1993-2010 they have been able to help 1895 children directly. Therapy and counseling specific to both women and children is provided by Psihološko Savjetovalište (Counseling Center) and has held over 17,000 sessions over the past 20 years.

Medica Zenica is unique in that it challenges the assumption made by others that these victims are viewed in terms of ethnicity. Through the "16 Days of Activism against Gender Based Violence" campaign, Medica Zenica aims to fill in the gaps on the dialogue surrounding violence against women, particularly at the legal level. They aim to obtain gender equality by means of understanding crimes committed against women as a subset of crimes against humanity. In the past, women and humanity have appeared to occupy separate spheres, when in reality they are contained within one another. This campaign acknowledges this misconception and has been taking steps to correct it.

Part of being a key actor in shaping the dialogue surrounding violence against women in Bosnia is contributing to the international commentary. Through their Prevenivni Rad (Preventive Work), Medica contributes data to Amnesty International's survey of the status of war rape survivors. They have consistently been able to provide interviews and questionnaires, in

addition to participating in regular meetings. Their work locally in Zenica makes a strong impact on the women and children affected by wartime rape, but their work internationally is what helps to change the perspective on the interplay between gender and ethnicity when dealing with these crimes. There is no evidence to support that this will change the ways that women are protected in the international courts, but the initial work is promising.

Facing History and Ourselves (FHAO) is another organization working very closely with the reintegration effort. Stationed all across the world, FHAO gives youth the opportunity to review the Yugoslav Wars objectively, learn about the history of the region in a non-biased fashion, and hear/share war stories. Their aim is to create a discussion within the younger generation, particularly between children born of rape and those unaffected by the crimes. Since the youth belief system was set in place by older generations, whose perspective is often jaded or limited, FHAO tries to remove biased notions about war victims to create a harmonious society. Despite the work done by both Medica Zenica and Facing History and Ourselves, there is still a lack of international engagement that leaves many children unaccounted for and underrepresented.

A large obstacle that these children continue to face—whether they were directly affected by ethnic cleansing or not—is the salient idea in the Balkans that identity is singular and always ethnic. Children born of rape are categorized neither by their upbringing nor their personal ideas about self-identification; rather, they are positioned into an identity that is projected upon them from the outside. Their mothers' assailants, their mothers' communities, and the children's peers all have a desire and societal need to define this new class of 'other' as something different than them. Whether these children see themselves as outsiders or not has nothing to do with how they are defined, and their own ideas about where they belong seem not to matter. Again, this reveals

another shortcoming of the singular ethnic identity which these children face post-war. Moving forward, the era of tight alignment with nation, state, language, and religion may be coming to a close for the Former Yugoslavia's new generations, yet the pressure of a bloody and sad past continue to cast a dark shadow of unacceptance onto its victims. While dark, this shadow is not permanent. The work being done by local NGOs and younger generations to move beyond their past gives hope that the same shadow will one day be cast away leaving a new community of harmony and peace.

## V. Conclusion

When criminalizing rape as a war crime, the over-emphasis and misunderstanding of ethnicity de-emphasizes the role of gender, failing to challenge the long-standing patriarchal norms that serve as the backdrop of such rapes. The legal theorization of wartime rape explains the lack of re-integration and acceptance of female victims and the children born as a result of these crimes. While some women may receive justice through individual trials directly against their assailants, the exclusion of so many other women whose crimes did not fit the criteria for the ICTY remains underserved. This exclusion affirms that MacKinnon's camp which favored genocidal rape won out in the court room. With the focus on ethnicity globally, it is not shocking that the court followed suit and tried sexist violent crimes in the light of ethnicity rather than gender and patriarchy, paralleling the good versus evil motif already established by the international community. It is significant to note that rape was successfully tried as a crime against humanity, which legal scholars have noted is the most significant set of crimes in the international court. While a step in the right direction, these rulings are still limiting given the ethnic qualifiers which narrow the potential cases that can be brought to court. Women as a group have not gained full agency under the law in regards to wartime rape.

To understand how women and their children born of rape have struggled to reintegrate back into their respective communities, we can look at the nationalist motivations for the war, the legal theorization of rape, and the complicated formation of identity in the Former Yugoslavia as an explanation. Women are the symbol of their nations. Through this symbolism, women have both become targets for ethnically-motivated crimes and scapegoats for local communities to expel women after being made impure from rape. As women struggle to maintain their identities and their children come of age, they begin to ask meaningful questions about identity. Today, these children represent the new generation of Yugoslavs and remind the international community why a 20 year-old war is still meaningful and relevant. While there is still a tendency to define women and children victims of the war as something foreign to the rest of the population, the work being done by younger generations and NGOs gives hope that the future is bright for this new class of former Yugoslavs.

## Bibliography

- Brownmiller, Susan. "Making Female Bodies the Battleground." *Mass Rape: The War Against Women in Bosnia-Herzegovina*. Lincoln: University of Nebraska, 1994. N. pag. Print.
- Card, Claudia. "Rape as a Weapon of War." *Hypatia* 11.4 (1996): 5-18. Print.
- Carpenter, R. Charli. "Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks." *International Studies Quarterly* 51.1 (2007): 99-120. Print.
- Carpenter, R. Charli. "Studying Issue (Non)-Adoption in Transnational Advocacy Networks." *International Organization* 61.03 (2007): n. pag. Print.
- Copelon, Rhonda. "Surfacing Gender: Reconceptualizing Crimes against Women in Time of War." *Mass Rape: The War Against Women in Bosnia-Herzegovina*. Lincoln: University of Nebraska, 1994. N. pag. Print.
- Declaration of the 1993 World Conference of Human Rights in Vienna (A/conf.157/PC/add.). 30 Apr. 1993. *Human Rights Documents*
- Dubin, Siobhan K. "Memorandum for the Office of the Prosecutor of the I.C.T.R." *Case Western Reserve University School of Law International War Crimes Research Lab* 1.25 (2003): n. pag. Web. June 2013.
- Engle, Karen. "Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia-Herzegovina." *American Society of International Law* 99.4 (2005): 778-816. Print.
- Fabijanić, Sandra, and Budislav Vakas. "Pravna Priroda I Politička Pozadina Oružanih Sukoba U Hrvatskoj I Bosni I Hercegovini." *Zbornik Pravnog Fakulteta U Zagrebu / Jugoslavenska Akademija Znanosti I Umjetnosti* 58 (2008): n. pag. Web. Aug. 2013.
- Furundžija (IT-95-17/1) "Lašva Valley". 2 Nov. 1995. *ICTR/ICTY Case Law Database*. Web. Jan. 2014.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (75 UNTS 287). 21 Oct. 1950. *refworld*
- Grbavica*. Dir. Jasmila Žbanić. By Jasmila Žbanić and Barbara Albert. Dogwoof Pictures, 2006. DVD.
- Hartmann, Florence (July 2007). "A statement at the seventh biennial meeting of the International Association of Genocide Scholars."
- Helsinki. <http://www.helsinki.org/rs/tjgenocide/t01.html>. Retrieved December 2013
- Hoare, Marko A. "The War of Yugoslav Succession." *Central and Southeast European Politics since 1989*. By Sabrina P. Ramet. Cambridge, UK: Cambridge UP, 2010. 111-35. Print.

Höglund, A. T. "Justice for Women in War? Feminist Ethics and Human Rights for Women." *Feminist Theology* 11.3 (2003): 346-61. Print.

International Criminal Tribunal for the former Yugoslavia (ICTY) (S/RES/827(1993)). 25 May. 1993. *United Nations Resolution Database*

Jahn, George. "Bosnian Kids Born of War Rape Asking Questions." *Associated Press* [Sarajevo, Bosnia-Herzegovina] 31 May 2005: n. pag. Print.

Khan, Mutjeeb R. "Bosnia-Herzegovina and the Politics of Religion and Genocide in the "New World Order"" *Islamic Studies* 36.2/3 (1997): 287-327. Print.

Khushalani, Yougindra. *Dignity and Honour of Women as Basic and Fundamental Human Rights*. The Hague: Martinus Nijhoff, 1982. Print.

Kovalovska, Adriana. "Rape of Muslim Women in Wartime Bosnia." *ILSA Journal of International & Comparative Law* 3.93 (1997): 1-18. *LexisNexis Academic*. Web. 6 Dec. 2012.

Kunarac et al. (IT-96-23 & 23/1) "Foča". 18 Jun. 1996. *ICTR/ICTY Case Law Database*. Web. Jan. 2014.

MacKinnon, Catharine A. "Rape, Genocide, and Women's Human Rights." *Harvard Women's Law Journal* 17.5 (1994): 1-9. *LexisNexis Academic*. Web. 6 Dec. 2012.

MacKinnon, Catharine A. "Rape, Genocide, and Women's Human Rights." *Mass Rape: The War Against Women in Bosnia-Herzegovina*. Lincoln: University of Nebraska, 1994. N. pag. Print.

Mazower, Mark. *The Balkans: A Short History*. New York: Modern Library, 2000. Print.

*Medica Zenica*. Medica Zenica, n.d. Web. 1 Oct. 2012. <<http://medicazenica.org/uk/index.php>>.

Mucić et al. (IT-96-21) "Čelebići Camp". 19 Mar. 1996. *ICTR/ICTY Case Law Database*. Web. Jan. 2014.

Prevention and Punishment of the Crime of Genocide (A/RES/260). 9 Dec. 1948. *United Nations Resolution Database*

"PTSD: National Center for PTSD." Rape of Women in a War Zone. U.S. Department of Veterans Affairs, n.d. Web. 20 Feb. 2014.

Race, Helena. "Dan Prej." *Univerza V Ljubljani Fakulteta Za Družbene Vede* (2005): n. pag. Web. Dec. 2013.

Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993) (S/25704). 3 May. 1993. *United Nations Resolution Database*

Salzman, Todd A. "Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia." *Human Rights Quarterly* 20.2 (1998): 348-78. Print.

Skjelsbaek, Inger. "Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina." *Feminism & Psychology* 16.4 (2006): 373-403. Print.

Strupinskiene, Lina. "Living In The Shadows Of Past Atrocities: War Babies In Bosnia." *Wagadu* 10.Spring (2012): 55-71. Print.

Swain, Geoff, and N. Swain. *Eastern Europe since 1945*. New York: St. Martin's, 1993. Print.

Tadić (IT-94-1) "Prijeedor". 13 Feb. 1995. *ICTR/ICTY Case Law Database*. Web. Jan. 2014.

Tournaye, Cécile. "Genocidal Intent Before the Icty." *International & Comparative Law Quarterly* 52.02 (2003): n. pag. Print.

Vasiljević (IT-98-32) "Višegrad" ICTY. 26 Oct. 1998. *ICTR/ICTY Case Law Database*. Web. Jan. 2014.

Velikonja, Mitja. "Religious Separation and Political Intolerance in Bosnia-Herzegovina." *College Station: Texas A&M University Press* (2003): n. pag. Print.

Weitsman, P. (2008, Aug.). The politics of identity and sexual violence: A review of Bosnia and Rwanda. *Human Rights Quarterly*, 30(3), 561-578.

Zitnik, Edward M., Jr. "Congratulations!" Columbus, OH: n.p., 2013. Print.

Zitnik, Edward M., Jr. "Ethnic Cleansing" Columbus, OH: n.p., 2013. Print.

Zitnik, Edward M., Jr. "Good vs Evil" Columbus, OH: n.p., 2013. Print.

Zitnik, Edward M., Jr. "Skip It" Columbus, OH: n.p., 2013. Print.